

1                   A bill to be entitled  
2       An act relating to civil liability for COVID-19-  
3       related claims against certain healthcare entities;  
4       creating s. 768.381, F.S.; providing legislative  
5       findings and intent; defining terms; providing  
6       requirements for a civil action based on a COVID-19-  
7       related medical claim; providing requirements for a  
8       civil action based on a COVID-19-related negligence  
9       claim; providing severability; providing retroactive  
10      application; providing an effective date.

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12   Be It Enacted by the Legislature of the State of Florida:

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14           Section 1.   Section 768.381, Florida Statutes, is created  
15   to read:

16           768.381   Liability protections for COVID-19-related claims  
17   against certain healthcare providers.-

18           (1)   The Legislature finds that the COVID-19 outbreak in  
19   the state threatens the continued viability of certain  
20   healthcare institutions and other entities that serve the  
21   overall well-being of the state. The threat of unknown and  
22   potentially unbounded liability to such institutions and  
23   entities, in the wake of a pandemic that has already left many  
24   of these institutions vulnerable, has created an overpowering  
25   public necessity to provide an immediate and remedial

26 legislative solution. Therefore, the Legislature intends for  
27 these institutions and entities to enjoy heightened protections  
28 against certain types of civil liability as a result of the  
29 COVID-19 pandemic. The Legislature also finds that there are no  
30 alternative means to meet this public necessity, especially in  
31 light of the sudden, unprecedented nature of the COVID-19  
32 pandemic. The Legislature finds the public interest as a whole  
33 is best served by providing relief to these institutions and  
34 entities so that they may remain viable and continue to serve  
35 the state.

36 (2) As used in this section, the term:

37 (a) "COVID-19" means the novel coronavirus.

38 (b) "COVID-19-related medical claim" means a tort claim  
39 arising under chapter 400, 429, or 766, which is based on the  
40 defendant's breach of the applicable standard of care or duty of  
41 care, and which breach:

42 1. Caused a person to contract COVID-19;

43 2. Arose from the defendant's delay or omission in  
44 performing a surgical procedure, which delay or omission was  
45 directly caused by the COVID-19 pandemic; or

46 3. Arose from the defendant's act or omission with respect  
47 to an emergency medical condition as defined in s. 395.002(8),  
48 and which act or omission was the result of a lack of resources  
49 directly caused by the COVID-19 pandemic.

50        4. Arose from the defendant's provision of a novel or  
51 experimental COVID-19 treatment to a patient diagnosed with  
52 COVID-19.

53        5. Arose from the defendant's provision of treatment to a  
54 patient diagnosed with COVID-19 whose injuries were directly  
55 related to an exacerbation of the patient's pre-existing  
56 conditions by COVID-19.

57        (c) "COVID-19-related negligence claim" means a tort claim  
58 brought against a healthcare provider not arising under chapter  
59 400, 429, or 766, which is based on the defendant's breach of  
60 the applicable duty of care which caused a person to contract  
61 COVID-19.

62        (d) "Healthcare provider" means:

63        1. A provider as defined in s. 408.803.

64        2. A clinical laboratory providing services in the state  
65 or services to health care providers in the state, if the  
66 clinical laboratory is certified by the Centers for Medicare and  
67 Medicaid Services under the federal Clinical Laboratory  
68 Improvement Amendments and the federal rules adopted thereunder.

69        3. A federally qualified health center as defined in 42  
70 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the  
71 effective date of this act.

72        4. Any site providing health care services which was  
73 established for the purpose of responding to the COVID-19  
74 pandemic pursuant to any federal or state order, declaration, or

75 waiver.

76 5. A health care practitioner as defined in s. 456.001.

77 6. A health care professional licensed under part IV of  
78 chapter 468.

79 7. A home health aide as defined in s. 400.462(15).

80 8. A provider licensed under chapter 394 or 397 and its  
81 clinical and non-clinical staff providing inpatient or  
82 outpatient services.

83 9. A continuing care facility licensed under chapter 651.

84 10. A pharmacy permitted under chapter 465.

85 (3) With respect to a COVID-19-related medical claim:

86 (a) It is an affirmative defense that the defendant  
87 complied with government-issued health standards or guidance in  
88 effect at the time the cause of action accrued.

89 (b) The factfinder must consider all relevant surrounding  
90 circumstances, including any relevant effects of the COVID-19  
91 pandemic, in determining the appropriate standard of care.

92 (c) A defendant is not liable for any act or omission  
93 unless such act or omission constitutes gross negligence as  
94 defined in s. 768.72(2)(b), recklessness, or intentional  
95 misconduct as defined in s. 768.72(2)(a).

96 (4) With respect to a COVID-19-related negligence claim:

97 (a) The complaint must be pled with particularity.

98 (b) At the same time the complaint is filed, the plaintiff  
99 must submit an affidavit signed by a physician actively licensed

100 in the state which attests to the physician's belief, within a  
101 reasonable degree of medical certainty, that the plaintiff's  
102 COVID-19-related damages, injury, or death occurred as a result  
103 of the defendant's acts or omissions.

104 (c) The court must determine, as a matter of law, whether:

105 1. The plaintiff complied with paragraphs (a) and (b). If  
106 the plaintiff did not comply with paragraphs (a) and (b), the  
107 court must dismiss the action without prejudice.

108 2. The defendant made a good faith effort to substantially  
109 comply with any authoritative or controlling government-issued  
110 health standards or guidance at the time the cause of action  
111 accrued.

112 a. During this stage of the proceeding, admissible  
113 evidence is limited to evidence tending to demonstrate whether  
114 the defendant made such a good faith effort.

115 b. If the court determines that the defendant made such a  
116 good faith effort, the defendant is immune from civil liability.

117 c. If the court determines that the defendant did not make  
118 such a good faith effort, the plaintiff may proceed with the  
119 action. However, absent at least gross negligence proven by  
120 clear and convincing evidence, the defendant is not liable for  
121 any act or omission relating to a COVID-19-related negligence  
122 claim.

123 (d) The burden of proof is upon the plaintiff to  
124 demonstrate that the defendant did not make a good faith effort

125 under subparagraph (c)2.

126 (e) The factfinder must consider all relevant surrounding  
127 circumstances, including any relevant effects of the COVID-19  
128 pandemic, in determining the appropriate standard of care.

129 (5) A plaintiff must commence a civil action for a COVID-  
130 19-related medical claim or a COVID-19-related negligence claim  
131 within 1 year after the cause of action accrues or within 1 year  
132 of the effective date of this act if the cause of action accrued  
133 before the effective date of this act.

134 Section 2. If any provision of this act or its application  
135 to any person or circumstance is held invalid, the invalidity  
136 does not affect other provisions or applications of the act  
137 which can be given effect without the invalid provision or  
138 application, and to this end the provisions of this act are  
139 severable.

140 Section 3. This act shall take effect upon becoming a law  
141 and shall apply retroactively. However, the provisions of this  
142 act shall not apply in a civil action against a particularly  
143 named defendant which is commenced before the effective date of  
144 this act.

145 Section 4. This act is repealed one year and a day from the  
146 date of becoming a law, unless reenacted by the Legislature.